

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

CrI.MC.No. 4033 of 2006()

AGAINST THE JUDGEMENT/ORDER IN BA.3547/2006 Dated 28/06/2006
CRIME 65/06, VADAKKEKKARA POLICE STATION
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PETITIONER:

1. DILEEP T.B., S/O. BALAKRISHNA MENON,
THEVARKKAD HOUSE, CHERUKADAPPURAM,
NORTH KUTHIYATHODU P.O., ERNAKULAM DISTRICT.
2. K.K.RAJESH , AGED 29 YEARS,
S/O. KUMARAN, KALOPPATHY HOUSE,
N.KUTHIYATHODU P.O., ERNAKULAM DISTRICT.

BY ADV. SRIKAPPILLIL ANILKUMAR
SMT.S.BINDU

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. RATHEESH AMBADI, AGED 24 YEARS,
S/O. VENUGOPAL, AMBADI HOUSE,
CHERUKADAPPURAM, N.KUTHIYATHODU P.O.,
ERNAKULAM DISTRICT.

R2 BY ADV. SRI.K.J.ALPHONSA
SRI.SUJITH MATHEW JOSE
R1 BY PUBLIC PROSECUTOR SRI.K.A. AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 4033 of 2006

Dated this the 3rd day of January, 2007

ORDER

The first petitioner is the victim in a prosecution initiated, inter alia, under Section 326 I.P.C. and the second petitioner is one of the witnesses in the said Crime No.65 of 2006. Later, allegations under the Arms Act and of the offence punishable under Section 307 I.P.C. have also been included. The respondent herein is the first accused.

2. The crux of the allegation is that on account of prior animosity, the accused had engaged hired criminals and inflicted grave injuries on the first petitioner. The accused was arrested and was enlarged on bail as per order dt. 28.6.2006, subject to certain conditions. The period stipulated in the said order for operation of the conditions has elapsed and at the moment there is no specific condition fettering the liberty of the accused.

3. The petitioners have come to this court with a grievance that the petitioners as well as the other witnesses, who are to depose in the crime have been threatened and intimidated by the respondent/accused. It is contended that the respondent/accused is abusing the

liberty granted to him by the Court in the order granting bail and is interfering with due course of justice. In these circumstances it is prayed that bail granted to the respondent/accused may be cancelled.

4. Notice was given to the learned Prosecutor and the respondent. The respondent has entered appearance. He opposes the application. He submits that the petitioners are actuated by malafides and are raising false and untenable allegations against the respondent. The learned Public Prosecutor submits that according to the police there has been no incident of intimidation and threat traded by the accused against the petitioners or other witnesses and in these circumstances the police do not endorse the request for cancellation of bail.

5. Annexures F, G, H and I are the petitions allegedly filed by the petitioner and the witnesses complaining about the threat and intimidation by the respondent. Annex.F filed by a witness relates to an incident that had taken place as early as on 8.7.2006. Affidavit to that effect is seen filed on 10.7.06. Annex,G relates to an incident on 14.9.06. The affidavit is seen filed on 19.9.06. Though it is said that those witnesses had informed the police about the alleged misdeeds of the respondent, there is no crime registered in respect of those incidents. There is no acknowledgment to

show that any such complaint had been filed. Annex.H is filed by the first petitioner herein/the victim and Annex.I is the petition filed by the second petitioner. Annex.H relates to an alleged incident on 30.10.06. It is alleged that over the telephone the first petitioner was intimidated. Annex.I relates to an incident which allegedly took place on 17.11.06. The complaint is dated 24.11.06. The police had registered a crime in respect of that alleged incident. They have come to the conclusion that no such incident had taken place and the allegation is false.

6. Cancellation of bail is a rare and harsh remedy which the law can prescribe. It is by now well settled that the principles that apply while considering an application for grant of bail do not apply when application for cancellation of bail is considered. It does not appear to be necessary to advert to the allegations in detail. I need only mention that sufficient circumstances which can justify this court resorting to grant of such harsh remedy of law of cancellation of bail are not shown to exist. This does not mean that the police should not take active interest in ensuring that the petitioners and the other witnesses are not threatened or intimidated. The Police shall have to closely watch the accused and in case there is any threat or intimidation or violence traded against the petitioners or other witnesses,

the respondent/police must take effective action to prevent such alleged acts. It shall be open for the police in that event to come before this Court again for cancellation of bail.

7. This Crl.M.C. is dismissed with the above observations.

(R. BASANT)
Judge

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